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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,946	07/11/2003	Richard F. Gladney	SMCY-P01-085	4482

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BOSTON, MA 02110-2624

EXAMINER
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SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/617,946	GLADNEY, RICHARD F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert G. Santos	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 7/07/04, 8/26/04, 1/03/05 & on 3/04/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23,26,29-42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23,26,29-42 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/5/04, 8/26/04 &amp; 3/04/05</u> | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 42 and 44 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Pat. No. 6,832,397 to Gaboury et al. (note especially Figures 2, 6, 7, 9 & 11-13; column 5, lines 56-67; and column 6, lines 1-15).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17, 22, 23, 26 and 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gaboury et al. '397. Broyles '729 is considered to show all of the limitations as recited in claims 1-10, 13, 16, 22, 23, 26, 29-36 and 39-41 (see Figures 1-4; column 2, lines 25-39; and column 3, lines 12-19 & 58-69) except for the use of at least one pair of grooves disposed on opposing portions of the at least one sidewall, at least one brace connecting opposing portions of the at least one sidewall, the at least one brace having end sections configured to latchingly engage with the grooves wherein each of the at least one pair of grooves has a dovetail configuration and the at least one brace includes a ribbed non-planar reinforcing structure having air spaces formed therein, and at least one reinforcing fin or truss oriented perpendicularly to the lower side of the top surface and extending between opposing sides of the at least one sidewall. Gaboury et al. '397 provide the basic teaching of a substantially plastic bed foundation (20) comprising at least one brace, fin, or truss (26) oriented perpendicularly to the lower side of the top surface (28), extending between opposing sides of the at least one sidewall (22, 24) and including a ribbed non-planar reinforcing structure having air spaced formed therein (as shown in Figures 11 & 12), wherein the at least one sidewall includes at least one pair of grooves (132) being disposed on opposing portions of the at least one sidewall and having a dovetail configuration which latchingly engages with the end sections (134) of the at least one brace, fin, or truss. The skilled artisan would have found it obvious at the time the invention was made to provide the assembly of Broyles '729 with at least one pair of grooves disposed on opposing portions of the at least one sidewall, at least one brace connecting

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opposing portions of the at least one sidewall, the at least one brace having end sections configured to latchingly engage with the grooves wherein each of the at least one pair of grooves has a dovetail configuration and the at least one brace includes a ribbed non-planar reinforcing structure having air spaces formed therein, and at least one reinforcing fin or truss oriented perpendicularly to the lower side of the top surface and extending between opposing sides of the at least one sidewall in order to “enhance the structural rigidity of the bed foundation” by providing “additional support and [preventing] deflection in a central region of the bed foundation where a high concentration of a person’s weight will be located while that person is lying on the bed”, thereby ensuring enhanced user comfort (see Gaboury et al. ‘397, column 5, lines 60-67 and column 6, lines 1-2).

As concerns claim 11, Broyles ‘729 as modified by Gaboury et al. ‘397 does not specifically disclose a condition wherein the perimeter of the top surface has a shape selected from the group consisting of a circle, an ellipse and a heart. It would have been obvious at the time the invention was made to provide the mattress foundation of Broyles ‘729 as modified by Gaboury et al. ‘397 with a top surface having a perimeter formed in the shape of a circle, an ellipse or a heart since such a modification would have been generally recognized as being within the level of ordinary skill in the art. With regards to claims 12, 14 and 15, Gaboury et al. ‘397 also disclose the use of a mattress assembly comprising a ribbed top surface (28) and at least one sidewall (22, 24) which is corrugated and includes non-planar components (see Figures 6-9 & 17 and column 7, lines 24-35). The skilled artisan would have found it obvious at the time the invention was made to provide the assembly of Broyles ‘729 with a ribbed top surface and at least one sidewall which is corrugated and includes non-planar components in order “to further

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enhance the structural rigidity of the [mattress assembly] components”, thereby ensuring proper support for a user positioned thereon (see Gaboury et al. ‘397, column 7, lines 24-25).

As concerns claims 17, 37 and 38, Gaboury et al. ‘397 further disclose conditions wherein the upper side of the top surface further include a first mating structure (156) and an edge region of the at least one sidewall further includes a second mating structure (152, 154) adapted to engage with the first mating structure and wherein the foundation is constructed, at least in part, of a metal structural member (53) covered by plastic (see Figure 5 and column 4, lines 60-65). The skilled artisan would have found it obvious at the time the invention was made to provide the assembly of Broyles ‘729 with an upper side of the top surface including a first mating structure and an edge region of the at least one sidewall further including a second mating structure adapted to engage with the first mating structure and with a foundation which is constructed, at least in part, of a metal structural member covered by plastic in order to strengthen the connection(s) between adjacent assembly elements, thereby enhancing the overall structural integrity of the assembly.

5. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles ‘729 in view of Gaboury et al. ‘397 and further in view of Saputo ‘946. Broyles ‘729 as modified by Gaboury et al. ‘397 does not specifically disclose the use of a headboard tangentially extending vertically along one end of the foundation and removably attached to the foundation. Saputo ‘946 provides the basic teaching of a plastic mattress foundation (10) provided with brackets (59, 60) for securing a headboard thereto. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of

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Broyles '729 as modified by Gaboury et al '397 with a headboard tangentially extending vertically along one end of the foundation and removably attached to the foundation in order to impart a more finished appearance thereto. As concerns claim 20, Broyles '729, as modified by Gaboury et al. '397 and as further modified by Saputo '946, is considered to show a condition wherein the headboard is integrally formed with the foundation, since it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Gaboury et al. '397 and further in view of Saputo '946 as applied to claim 18 above, and further in view of Bellows et al. '191. Broyles '729, as modified by Gaboury et al. '397 and as further modified by Saputo '946, does not specifically disclose a condition wherein the headboard is constructed substantially of plastic material. Bellows et al. '191 provide the basic teaching of a plastic bed frame (10) including a headboard (16) and constructed from a plastic material (see Bellows et al. '191, column 3, lines 37-39). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Gaboury et al. '397 and as further modified by Saputo '946, with a headboard constructed substantially of plastic material since such a headboard is generally well known as being economical and lightweight as taught by Bellows et al. '191, thereby also facilitating attachment to a mattress foundation.

***Response to Amendment***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gladney '259, Gladney '233, Hooper, Jr. '275 and Hooper, Jr. 274.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

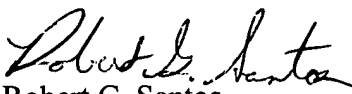
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
April 4, 2005